

IONE BAND OF MIWOK INDIANS,  
Appellant

v.

SACRAMENTO AREA DIRECTOR,  
BUREAU OF INDIAN AFFAIRS,  
Appellee

: Order Docketing Appeal and  
: Affirming Decision  
:  
:  
: Docket No. IBIA 92-189-A  
:  
:  
: August 4, 1992

This is an appeal from a May 11, 1992, letter of the Sacramento Area Director, Bureau of Indian Affairs, declining to review an economic development agreement between appellant and the American Development Company, Ltd., on the grounds that appellant is not a Federally recognized Indian tribe.

The issue raised in this appeal appeared to be similar to those addressed in Edwards, McCoy, and Kennedy v. Acting Phoenix Area Director, 18 IBIA 454 (1990), and Northwest Computer Supply, v. Acting Deputy to the Assistant Secretary--Indian Affairs (Operations), 16 IBIA 125 (1988), in which the Board held that Departmental officials are bound by the regulations in 25 CFR Part 83, with respect to which entities may be considered Indian tribes for purposes of statutes which do not define the term "Indian tribe." In particular, Edwards, McCoy, and Kennedy concerned construction of the term "Indian tribe" for purposes of 25 U.S.C. § 81 (1988), the statute under which appellant sought review of its contract in the matter on appeal here. The Board sent copies of the two decisions to appellant's attorney and ordered appellant to show cause why the Area Director's decision should not be summarily affirmed under those decisions.

Appellant's response was received on July 27, 1992. Much like the arguments made in Edwards, McCoy, and Kennedy, appellant here contends that it was recognized by the Department of the Interior prior to promulgation of the regulations now found in 25 CFR Part 83 and therefore should not be required to comply with those regulations. Appellant admits that it unsuccessfully made this argument to the Federal District Court for the Eastern District of California. In an order issued on April 22, 1992, that court held that appellant had failed to demonstrate that it was entitled to federal recognition through any mechanism outside the acknowledgment process in 25 CFR Part 83 and that appellant had failed to exhaust its administrative remedies by applying for acknowledgment in accordance with the regulations. The court also rejected as time-barred

appellant's attack on the regulations themselves and its attack on BIA's failure to include appellant on a list of tribes which were already Federally recognized. 1/ Ione Band of Miwok Indians v. Burris, Civ. S-90-993 LKK (E.D.Cal. April 22, 1992) (order granting Federal defendants' motion for summary judgment) .

Appellant argues that the district court's decision does not preclude administrative action because, inter alia, the Department has authority to correct its own errors. The Board agrees that the Department has authority to correct any errors it may have made with respect to the recognition of appellant. However, the forum in which any corrective action must be taken is the forum established in the acknowledgment regulations. Neither the Area Director nor this Board has any authority either to act under those regulations or to disregard the fact that the regulations are the exclusive mechanism by which Departmental officials may acknowledge Indian tribes. Appellant should present its arguments in connection with its petition for acknowledgment under those regulations.

Therefore, pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 CFR 4.1, this appeal is docketed, and the Sacramento Area Director's May 11, 1992, decision is affirmed.

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Anita Vogt  
Administrative Judge

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Kathryn A. Lynn  
Chief Administrative Judge

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1/ Appellant was not included on the first list of Federally recognized Indian tribes published pursuant to the then-new acknowledgment regulations. 44 FR 7235 (Feb. 6, 1979). Instead, it was included on a list of Indian groups whose petitions for recognition were pending at the time the regulations went into effect. 44 FR 116 (Jan. 2, 1979). The district court noted that appellant had not pursued its petition through the acknowledgment process.